

To whom it may concern,

I am writing to protest the Proposed Rulemaking #02-230, the HTDV "Broadcast Flag".

While I appreciate the motion picture industry's desire to avoid wholesale piracy

of its work, the implications of the broadcast flag go far beyond that and allow Hollywood to infringe upon the fair use rights of the public. Copyright is suppose

to be a delicate balance between the rights of the creator of a work and the rights

of the users of that work, but the broadcast flag tips that balance too far in favor

of the content creators by denying legitimate forms of fair use to the users.

With

laws like the Digital Millennium Copyright Act on the books, the balance is already

tipped heavily in favor of the content creators. Please do not make this imbalance

worse by enacting this misguided idea.

Hollywood has a history of opposing any technology that threatens their existing business model, for example the now-infamous attempt to quash the VCR over twenty

years ago and their threat to withhold their movies from color TV thirty years earlier.

New technology always endangers old business models, but it also makes new business

models possible. How much money would Hollywood not be making now if they weren't

licensing their movies for color TV broadcast, or if the video rental market didn't

exist? The recent success of Apple Computer's new iTunes Music Store is a more recent

testament to this, especially considering that its strongest competition, underground

file sharing, allows people to get the same high-quality digital content without paying for it. The lesson here is clear: people will pay for high-quality digital

content if it is reasonably priced, easy to acquire, and doesn't have unreasonable

strings attached. It should not be the job of the FCC to protect !

an aging business model against the inevitable advancement of technology.

Further, Hollywood is using the federal government's strong desire to promote the

wide scale adoption of HDTV to extort the broadcast flag as a concession to them before they release their movies in HDTV format. I use the word "extort" deliberately:

Hollywood is telling the FCC, "If you don't give us what we want then we won't help

you do what you need to do." This brazen attempt at extortion is reason enough to

deny them. Further, it has not been established that getting Hollywood movies released

for HDTV will substantively promote more rapid adoption of HDTV. Hollywood was releasing

movies on LaserDisc for quite some time, but that technology never caught on because it was too expensive. The same is true of HDTV, at least for the moment. Although prices have come down significantly, HDTV sets are still very much high end luxury items. And while set-top adapters to standard TV are not too expensive, they don't offer the consumer anything other than the ability to watch what they're already watching on standard TV. Until prices come down, the availability of Hollywood movies will probably not make a large difference in HDTV penetration. Therefore Hollywood's attempt to trade its movies in exchange for the broadcast flag will help Hollywood without helping the FCC. Finally, Hollywood has made threats like this before: threatening not to release its movies to color TV in the 1950s, and then threatening not to release them to prerecorded videos in the 1980s. In both cases, their bluffs were called and they folded. There is simply too much money to be made for them to do otherwise.

Perhaps the most odious aspect of the broadcast flag proposal is the fact that it would invest Hollywood with the ability to authorize or withhold authorization from new HDTV devices. This delegates lawmaking authority to a private industry, and that is simply not how things should be done in a democratic republic. The technology industry should not be shackled to the whims of Hollywood.

Please keep this in mind while making your decision: The federal government is ultimately responsible to the people, not to a small corporate elite. Hollywood doesn't vote to put people in office, the people do. What's best for Hollywood is not more important than what's best for the people. And Congress' desire to retire the analog broadcast spectrum and auction it is likewise not more important than the people's rights. Please don't so get carried away by the desire to get HDTV fully fielded that you lose sight of your primary responsibility: doing what's right for the people. While widespread deployment of HDTV will certainly benefit the people, it isn't worth sacrificing our rights for. Remember that the first three words of the U.S. Constitution are, "We the people," not "We the corporations."

Thank you for your time.

Donald L. Nash